

FREDERICK COUNTY PLANNING COMMISSION

December 14, 2011

TITLE: **Preston II: Preliminary Subdivision Plan**

FILE NUMBER: **S 1010** (AP# 12052, APFO 12053 & FRO 12054)

REQUEST: **Preliminary Plan Approval**
The Applicant is requesting Preliminary Plan approval for 91 lots, consisting of 46 single-family detached, 33 townhouses, with 12 MPDU's on 46.41 acres.

PROJECT INFORMATION:

LOCATION: Located at the terminus of Preston Drive and Broad Branch Way off Baltimore Road.
ZONE: R-3 Residential
REGION: New Market
WATER/SEWER: S-3/W-3
COMP. PLAN/LAND USE: Medium Density Residential

APPLICANT/REPRESENTATIVES:

APPLICANT: Bronco LLP and Clifton Drive LLP
OWNER: same
ENGINEER: Harris, Smariga & Associates, Inc.
ARCHITECT: Not Listed.
ATTORNEY: Not Listed

STAFF: Tolson DeSa, Principal Planner

RECOMMENDATION: **Conditional Approval**

Enclosures:

Exhibit #1: Site Plan Rendering
Exhibit #2 Letter of Understanding dated December 14, 2011

BACKGROUND

Subdivision History of Original Preliminary Plat: The Frederick County Planning Commission (FcPc) originally approved a preliminary plan for 109 single-family lots (comprising both Sections 1 and 2) on public water and sewer in 1991. Due (in part) to the delay in availability of sewer capacity, extensions were granted in 1994, 1996, and 1997. Thirty-five (35) lots were recorded in October 1996, which compose Section 1 of this development. *Section 1 is an all age community.*

The developer sought a further extension of the preliminary plan (comprising both Sections 1 and 2) and APFO approval for the remaining 74 lots in November 1996. At the November 1996 hearing, the FcPc determined that the project did not pass the APFO schools test. The Applicant amended the application to reduce the requested number of lots to 64. In December 1996, the FcPc determined that 64 lots in Preston passed the APFO schools test and approved a three-year extension of the preliminary plan for 64 lots, of the original 74 remaining lots.

In July 1997, the Applicant requested an APFO re-test for the original 74 remaining lots, due to acceleration of the Spring Ridge Elementary School building addition in the County's Capital Improvements Program (CIP). In September 1997, the FcPc granted conditional approval of the APFO re-test subject to: *"No building permits being issued until funding at Spring Ridge is approved"*. However, in 1999 the FcPc denied the preliminary plat extension due to the inability to pass school APFO tests, and the preliminary approval was voided.

August 2002 Cluster Plan (Section 2): The Applicant for this property applied for an 84-lot plan for Section 2 under the cluster provisions of the Zoning Ordinance. The FcPc granted conditional approval in August 2002. However, the subsequent adoption of the Moderately Priced Dwelling Unit (MPDU) Ordinance in November 2002 essentially superseded the "cluster" design provisions by providing "by-right" lot size and setback reductions. Also the MPDU provisions allow townhouses in the R-3 Residential zone.

October 11, 2006 (Section 2): The Applicant abandoned the 2002-approved cluster plan and proposed a 84-lot subdivision (Section 2) that utilizes the lot size and setback reductions, along with the inclusion of townhouses (or "villa") lots allowed by the MPDU provisions. *This proposed subdivision was an age-restricted community* composed of 84 Single-Family lots [41 Detached, 32 Market Villas (townhouses), and 11 MPDU Villas (townhouses)]. All of the villa units (or townhouses) will require future site plan approval by the FcPc.

On October 11, 2006, the Frederick County Planning Commission (FcPc) reviewed and conditionally-approved a Preliminary Subdivision Plan for this site (Preston, Section 2) for 84 single-family lots. Preston, Section 2 was approved as an *age-restricted community*. The FcPc added the following conditions to the approval:

- 1) Comply with all agency comments throughout the completion of the project including State Highway, Fire Marshal, Division of Utilities and Solid Waste Management, Historic Preservation, Traffic Engineering, Health Dept., Development Review Engineering, Development Review Planning, the Department of Parks and Recreation and the Board of Education.
- 2) Note on the plat that the amenities shall be re-examined at the time of Site Plan review in order to provide a more complimentary set of amenities with the adjoining Mains Property.
- 3) Provide agreement from the adjoining Mains Property owner agreeing to join HOA's, and to joint alley uses.
- 4) Provide full public right-of-way for the rotary, attempting to preserve as much of the root zone for the specimen trees as possible.
- 5) Add note to forest plan indicating the requirement for a Root Pruning and Fertilization Plan prepared by a Maryland Licensed Tree Expert as part of the Final Forest Conservation Plan.

Additionally, the FcPc conditioned the approval on the three "items of findings" and two proffers from the Applicant: Based on the correspondence in the record,

- 1) There shall be a sharing of the amenities with the adjoining Mains Property and that the Applicant shall prepare a list of amenities that shall be complementary.

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- 2) There shall be a joint Home Owner's Association with the Mains Property to serve both communities.
- 3) Financial guarantees for the roads in the Mains Property shall be in place prior to this Applicant executing financial guarantees for the roads (and other improvements) for the Preston, Sec. 2 property.
- 4) The Applicant shall meet with the homeowners of Preston, Section 1 to discuss their issues with regard to amenities (and access) prior to site plan presentation to the FcPc. (Staff would note that this issue needs to be presented for Staff review prior to the TAC meetings for the Site Plan.)
- 5) The Applicant shall work to place construction traffic off of the Preston, Section 1 roads in either the 30' easements to the service road or through Mains Property.

A preliminary plat request was scheduled before the Frederick County Planning Commission (FcPc) for 86 single-family lots on June 13, 2007. The design contained 41 single-family detached (SFD) lots, 34 Villa (Townhouse) lots and 11 MPDU (Townhouse) lots, for a total of 45 townhouse lots. However, the case was not heard because of posting problems. Subsequently, however, the Staff discovered that the application (and related Staff report) failed to identify a requirement for a minimum of 50% single-family detached (SFD) units. The requirement for minimum 50% SFD is contained within an obscurely placed footnote in the Zoning Ordinance under Section 1-19-28:

<i>Uses</i>	<i>RC</i>	<i>A</i>	<i>R1</i>	<i>R3</i>	<i>R5</i>	<i>R8</i>	<i>R12</i>	<i>R16</i>	<i>VC</i>	<i>HS</i>	<i>GC</i>	<i>ORI</i>	<i>LI</i>	<i>GI</i>
<i>Townhouse</i>				<i>PS*</i>	<i>PS</i>	<i>PS</i>	<i>PS</i>	<i>PS</i>	<i>PS</i>					

***Townhouses will be permitted only within MPDU developments; however, in no event shall the number of townhouses exceed 50% of the total number of units within the MPDU project.**

This oversight was communicated to the FcPc members by email upon its discovery shortly after the June 13, 2007 FcPc Meeting. Therefore, the June 13, 2007 FcPc preliminary plat application was not valid because that plan did not meet the 50% SFD minimum requirement.

The Applicant's re-submitted plan now correctly shows 44 SFD and 43 townhouse units, which represents a net gain of one (1) lot. The Applicant is seeking a new preliminary plat and APFO approval. As with the previous application, this development will join the Home Owner's Association (HOA) for this development with the adjoining Mains Heights HOA. Also, both of these developments are ***age-restricted communities subject to the Moderately Price Dwelling Unit (MPDU) provisions.*** After approval of the preliminary plat, the Applicant must also obtain site plan approval from the FcPc.

The Preston 2 Preliminary Subdivision Plan received conditional approval from the FCPC on September 12, 2007, this application was granted a six year extension in 2011, which extending the expiration date to September 12, 2016.

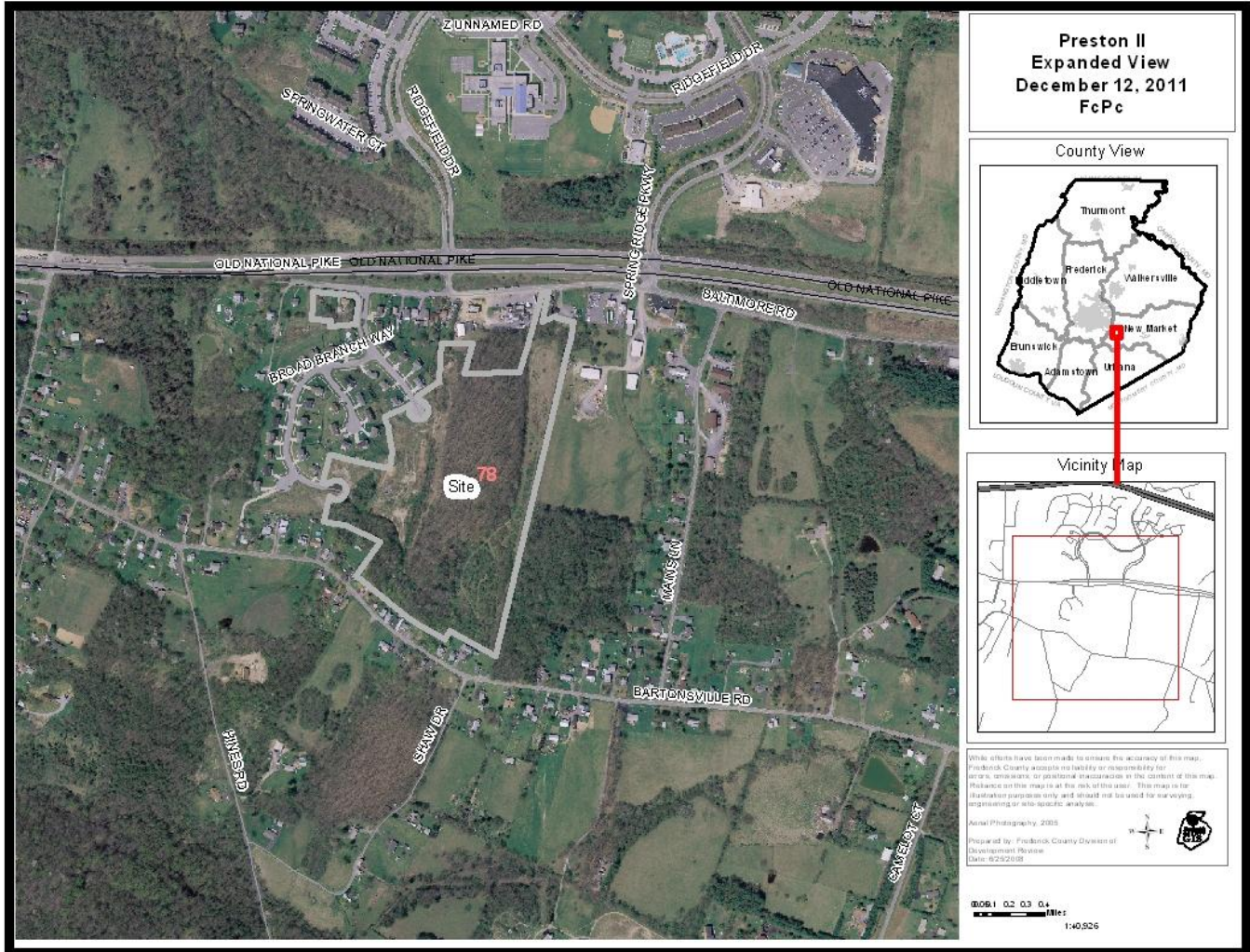
Background for Main's Heights Adjoining Age-Restricted Community: Immediately to the east is the Mains Property, was originally proposed and approved as an age-restricted community. On April 12, 2006, the FcPc also approved a preliminary plat for an **age-restricted community** called Mains Heights. Mains Property design contains a clubhouse, tennis court, putting green, gazebo, forest preservation and trails that connect to the sidewalk system and to the alleys. The Applicant of (Preston, Section 2) proposed to allow shared-uses of the amenities.

The approval for Mains Heights was for separate developments having separate Home Owner's Associations (HOAs). During the 2006 reviews, Staff had recommended that both owners consider joining the HOAs so that shared recreation facilities could be offered to the residents. However, at the October 2006 meeting, the owner of Preston, Section 2 agreed to join the HOAs.

Present Proposal:

In this application, the Applicant is requesting Preliminary Plan approval for 91 lots, consisting of 46 single-family detached, 33 townhouses, with 12 MPDU's on 46.41 acres. [Non-age-restricted?] The plan proposes 113 parking spaces for the townhouse units.

The past approvals in 2006 and 2007 were for 84 and 86 lots respectively. Staff notes that the present proposal is a Preliminary Subdivision plan only, and that the Applicant will have to return to FCPC for approval of the townhouse portion of Preston II later.



ANALYSIS

Land Use, Design & Layout: The proposed use is being reviewed under the **R-3 Residential** uses under per § 1-19-5.310 of the Zoning Ordinance. This proposed use is a principal-permitted-use subject to site development plan approval.

Dimensional Requirements & Bulk Standards: Section 1-19-6.100 of the Zoning Ordinance notes the following minimum lot criteria:

	Required:	<u>Proposed:</u>
Single Family Units:		
Min. Lot Width:	40'	60' Min.
Front Yard:	10'	23'
Side Yard:	4/10'	5'
Rear Yard:	25'	25'
Min. Lot Size:	4,000 Sq Ft	6,000 Sq Ft min.
	Required:	<u>Proposed:</u>
Townhouse Units:	N/A	
Min. Lot Width:	N/A	20'
Front Yard:	N/A	15'
Side Yard:	N/A	5'
Rear Yard:	N/A	15'
Min. Lot Size:	N/A	1,720 Sq Ft

Zoning: The site is located within the R-3 Residential (R-3) Zoning District.

Modernity Priced Dwelling Units (MPDU's): All 91 lots are to be developed based on the MPDU program per Section 1-19-8.620.5 of the MPDU ordinance. This plan proposes 12 MPDU's, in accordance with Section 1-19-8.620.6 requires that a written MPDU agreement must be approved by the Director of Housing in accordance with Chapter 6A prior to the issuance of a building permit or recordation of a final plat.

Frederick County Comprehensive Plan: New Market Region

The Frederick County Comprehensive Plan indicates that the land use for this property is Medium Density Residential. The use proposed for the parcel complies with the Land Use designation within the County Comprehensive Plan

Public Transit: This site is not directly served by Transit but **The East County Shuttle** operates between Frederick and Spring Ridge via MD 144 and provides service to Lake Linganore, New Market, and eastern Frederick County upon request..

Street and Circulation: The streets in Section 2 connect to Section 1 via Broad Branch Way. Broad Branch Way also provides a connection to the east to the adjoining (approved R-3 subdivision) Mains Heights, which connects indirectly to Mains Lane, and Rt. 144. The Applicant also proposes two road systems (one on the north-side of Broad Branch Way and one on the south-side). Both road systems connect via private alleys to the adjoining Mains Property alley system.

The north-side of Broad Branch Way contains an over-sized rotary that protects 4 specimen trees (all oak), as required by the Forest Resource Ordinance (FRO). (This public rotary will be augmented by a system of private roads to serve the villas.) The Applicant has proposed $\frac{3}{4}$'s public and $\frac{1}{4}$ private road right-of-way (ROW) for the rotary. However, the Engineering Section will require that the entire rotary be public ROW dedication.

The south-side of Broad Branch Way contains a private road system that serves the villas and that connects to the alley system in the adjoining Mains Property.

Parking Count:

Garage Townhouse parking Calculations: 1 space per unit plus ½ space for each bedroom. All units are 3 bedroom or 2.5 spaces required per unit. The proposed garage units are credited at ½ space and driveways are credited as a full space.

Shepherd Court South on Preston: 17 Walk-out Townhouses
9 Garage Townhouses
Parking Required: 65 spaces (26 x 2.5)
Parking Provided: 65 spaces (9 Garages, 4 Garage on lot, 52 surface units)

Shepherd Court North: 19 Walkout Townhouses
Parking Required: 48 spaces (19 x 2.5)
Parking Provided: 48 spaces

The proposed plan complies with all applicable parking regulations.

Open Space and Landscaping: § 1-16-111 of the Subdivision Ordinance requires that 726 square feet of parkland for each lot be created. 91 Lots x 726 square feet/Lot = 66,066 Square feet or 1.52-acres of Open space required. The Applicant has provided 17.12 acres of HOA open space, which includes walking trails and picnic areas.

The proposed plan complies with all applicable open space regulations.

Utilities: The site is classified S-3 DEV/W-3DEV. the site is to be served by public water and sewer.

Adequate Public Facilities Ordinance (APFO): This project was reviewed for potential impacts on schools, water/sewer and roads. The APFO approval can be granted for a six year period, because the Traffic Impact Analysis (TIA) upon which this approval was based studied a six year traffic-capacity window. See Exhibit #4.

Schools: The project will generate 19 elementary school students, 12 middle school students and 15 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails for the elementary and middle school levels. The developer has chosen the option to mitigate the school inadequacy by paying the Schools Construction Fees under S1-20-62(E) of the APFO. The School Construction Fees shall be paid at plat recordation based on the specific fees listed in S1-20-62(E) per unit type and school level that needs to be mitigated.

Water and Sewer Improvements: Water and Sewer: The Property is currently classified in the County's S-3 (Dev.) and W-3 (Dev.) sewer and water categories. Individual service laterals for each use will connect to the existing adjacent public sewer and water mains within public rights-of-way.

APFO approval for water and sewer does not guarantee that plats will be recorded and building permits issued. Plat recordation and building-permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 (of Subdivision Regulations). Plats cannot be recorded until the property obtains water and sewer classification of W-3/S-3; adequate water and sewer capacity exists and improvements required to serve the subject lots are under

construction and determined to be within ninety (90) days of completion.

Roads: A September 12, 2011 Traffic Impact Analysis and subsequent revision, submitted in combination with the Mains Heights Subdivision, were prepared to address APFO requirements and propose mitigation for failing facilities. The site analysis was based on traffic generation of a total amount of 63 am and 79 pm weekday peak hour trips.

The three off-site intersections deemed critical for this application and resulting levels of service (LOS) are as follows:

- MD 144/Quinn Orchard Rd/I-70 eastbound ramps: LOS F
- MD 144/Ridgefield Dr: LOS A
- MD 144/ Spring Ridge Pky: LOS A

The proposed mitigation for the failing MD 144 intersection at Quinn Orchard Rd/I-70 EB Ramps is the construction of an additional westbound through lane on MD 144 for approximately 2000' either side of the intersection. The Applicant has agreed to contribute a fair share contribution toward this improvement in an amount of \$17,091. If this improvement is not necessary because of the construction of the missing Meadow Road interchange ramps with I-70, this amount may be used as a contribution toward the interchange project at the discretion of the County. The details of the contribution are found in the attached LOU.

The APFO validity period is good for six (6) years from the date of Planning Commission conditional approval.

Forest Resource Ordinance (FRO): The Applicant has submitted a Preliminary Forest Conservation Plan for review. The site contains 15.88 acres of forest. Forest mitigation requirements are being met by preserving 4.14 acres of forest, planting 3.86 acres of new forest, and providing forest banking credits for the remaining 3.16 acres of required mitigation. The Preliminary Forest Conservation Plan must receive approval prior to Preliminary Plan approval.

A Final Forest Conservation Plan and legal documents must be executed prior to lot recordation, or grading or building permit application, whichever comes first.

OTHER AGENCY COMMENTS

<i>Other Agency or Ordinance Requirements</i>	<i>Comment</i>
<i>Development Review Engineering (DRE):</i>	Approved
<i>Development Review Planning:</i>	A few minor drafting issues noted in Hansen, in addition to items listed in the report.
<i>State Highway Administration (SHA):</i>	N/A.
<i>Div. of Utilities and Solid Waste Mngt. (DUSWM):</i>	Approved
<i>Health Dept.</i>	Approved
<i>Office of Life Safety</i>	Approved
<i>DPDR Traffic Engineering</i>	Approved
<i>Historic Preservation</i>	N/A.

FINDINGS

Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, APFO and FRO requirements once the conditions of approval have been met.

Staff notes that if the Planning Commission conditionally approves the site plan???, the site plan ??? is valid for a period of three (3) years from the date of Planning Commission approval.

Staff has no objection to conditional approval of the site plan.

RECOMMENDATION

Should the Planning Commission conditionally approve this Preliminary Plan S 1010 (AP# 12052, APFO 12053 & FRO 12054) for the proposed Preston II subdivision, the motion for approval should include the following items:

1. Preliminary plan approval for a period of five (5) years from today's date or until December 14, 2016.
2. The APFO approval is valid for six (6) years from the date of Commission approval; therefore, APFO approval expires on December 14, 2017.

Staff recommends that the following items be added as conditions of approval:

1. Address all agency comments as the plan proceeds through completion.
- 2.
3. The APFO approval is valid for six (6) years from the date of Commission approval; therefore, the APFO approval expires on December 14, 2017. A Final Forest Conservation Plan and legal documents must be executed prior to lot recordation, or grading or building permit application, whichever comes first.
4. Section 1-19-8.620.6 requires that a written MPDU agreement must be approved by the Director of Housing in accordance with Chapter 1-6A of the Frederick County Code prior to the issuance of a building permit or recordation of a final plat.
5. The Applicant shall work to place construction traffic off of the Section 1 roads in either the 30' easements to the service road or through the Mains Heights property.
6. Joint Preston Section II and Mains Heights HOA Documents to be reviewed and approved by Frederick County prior to plat recordation.

Exhibit #1 Overall Site Plan: Preston II



ILLUSTRATIVE PLAN
FOR
PRESTON - SECTION 2

STUART BRUNER & ASSOCIATES, INC.
ARCHITECTS
1000 N. 10TH STREET, SUITE 100
DENVER, CO 80202
SCALE: 1"=80' (1/20.31)

Harris, Smart & Associates, Inc.
PLANNING & ENGINEERING
1000 N. 10TH STREET, SUITE 100
DENVER, CO 80202
303-733-7000 / FAX 303-733-7001

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ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Preston Section 2

Preliminary Plat #S-1010 (Site Plan # SP 02-13) AP #12053

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and the Bronco, LLLP and Clifton Drive, LLLP ("Developer"), together with its/their successors or assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed for the Preston, Section 2, Residential Subdivision (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors or assigns, hereby agrees and understands that unless the required improvements are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 29.4 +/- acre parcel of land, which is zoned R-3 Residential, and located west of Mains Lane and north of Bartonville Road with access on Mains Lane and through the existing Preston, Section 1, Subdivision. This APFO approval will be effective for development of 46 single family detached homes and 45 townhouses on 91 lots, or any variation such that the intensity of vehicle trips or student generation is not increased, as is shown on the preliminary plan for the above-referenced Project, which was conditionally approved by the Commission on December 14, 2011.

Schools: The Project is projected to generate 19 elementary school students, 12 middle school students and 15 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails for the elementary and middle school levels. The developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This project is eligible to utilize the School Construction Fee option per the criteria set forth in S1-20-62 of the APFO. **The School Construction Fees shall be paid prior to plat recordation based on the specific fees listed in Section 1-20-62(E) per unit type and school level to be mitigated.**

Water and Sewer Improvements: The Property is currently classified in the County's S-3 (Dev.) and W-3 (Dev.) sewer and water categories. Public water and sewer shall be extended to the site and to serve individual lots shown on the plan

APFO approval for water and sewer does not guarantee that plats will be recorded and building permits issued. Plat recordation and building-permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 (of Subdivision Regulations). Plats cannot be recorded until the property obtains water and sewer classification of W-3/S-3; adequate water and sewer capacity exists at that time and improvements required to serve the subject lots are under construction and determined to be within ninety (90) days of completion.

Road Improvements: A September 12, 2011 Traffic Impact Analysis and subsequent revision, submitted in combination with the Mains Heights Subdivision, were prepared to address APFO requirements and propose mitigation for failing facilities. The analysis is based on traffic generation at a total amount of 63 am and 79 pm weekday peak hour trips.

In accordance with the developer option outlined in Sections 1-20-12 and -13 of the County Code, as a condition of the APFO approval of the Project, the Developer has opted to pay its proportionate contribution (in lieu of construction) toward the following escrow account:

- New Escrow Account at the Old National Pike (MD 144)/Quinn Orchard Road/I-70 EB Ramps Intersection. The estimated cost of the intersection improvement is \$ 460,446. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 5.53%. Therefore the Developer hereby agrees to pay \$25,445 to the escrow account for this Road Improvement.

These road escrow contributions must be paid in full prior to final plat recordation. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

The County is in the process of collecting funds for improvements at the interchange of Old National Pike (MD 144)/Meadow Road and I-70. Once constructed, traffic on MD 144 at Quinn Orchard Road would be expected to be reduced well below projected failing levels, thus negating the need for the mitigating improvement. The Developer agrees to permit the County to apply up to the entire escrow contribution toward this interchange improvement.

Period of Validity: The APFO approval is valid for six (6) years from the date of Commission approval; therefore, the APFO approval expires on December 14, 2017.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures on Next Page]

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DEVELOPER: Bronco LLC and Clifton Drive LLC
By: James E. J. Jones Date: 12/5/11
Name: _____
Title: General Partner

FREDERICK COUNTY PLANNING COMMISSION:

By: _____
John McClurkin, Chair or Robert Lawrence, Secretary

Date: _____

ATTEST:

By: _____
Gary Hessong, Director, Permitting & Inspections

Date: _____

Planner's Initials / Date _____
County Attorney's Office Initials / Date _____
(Approved as to legal form)

*Preston Section 2 LOU
December 14, 2011
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